

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30TH DAY OF JUNE 1998

Before

THE HON'BLE MR.JUSTICE KUMAR RAJARATNAM

W.P.NOs. 15301/1998 C/w 15302/1998.

Between:

Smt.Sudha M.Shenoy, Major,  
W/o Sri.N.M.Shenoy,  
R/at No.A-102,  
Kasturidhama Apartments,  
9th Cross, 8th Main Road,  
Malleswaram,  
Bangalore-560 009.

Petitioner  
(IN W.P.NO.15301/98)

Smt.K.V.Kalavathy, Major,  
R/at No.A-103, Kasturidhama  
Apartments, No.153, 8th Main,  
9th Cross, Malleswaram,  
Bangalore-560 003.

Petitioner  
(In W.P.No.15302/98).

(By Sri.M.Shiva Prakash, Adv.)

And:

1. Assistant Registrar of  
Money Lenders,  
Grain Merchant Co-operative  
Bank Building,  
Pampamahakavi Road,  
Chamarajapet,  
Bangalore-560 018.
2. Karnataka Appellate  
Tribunal (Co-operative)  
M.S.Building,  
Dr.Ambedkar Road,  
Bangalore-560 001,  
by its Secretary.
3. The Secretary,  
Vyalikaval House Building  
Co-operative Society Ltd.,  
No.100, 11th Cross, Malleswaram,  
Bangalore-560 003.

Respondents  
(common in both W.Ps).

(By Sri.B.Veerappa, HCGP).

...

W.P.NO.15301/98 is filed under Articles 226 & 227 of the Constitution of India, praying to quash vide Ann.E, dated 30.8.97 by R1 and that of the Judgment passed by the KAT (Co-Operative Bench) the R2 herein dated 6.4.98 vide Annex.F.

W.P.NO.15302/98 is filed under Articles 226 & 227 of the Constitution of India, praying to quash the order passed by R-1 vide Annex-C. dt.30.8.97 and that of the Judgement passed by the R-2 dt.6.4.98 vide Annex.D.

These petitions coming on for preliminary hearing this day, the Court made the following:

O R D E R

The petitioners are members of the Society. They entered into an agreement at Annexure-A for construction of flats. The agreement was entered into on 24.6.1990 for a total valuation of Rs.2,54,125/-. There was a further escalation of nearly a sum of Rs.64,000/-.

*Mr. Tarakaram*

2. The learned Senior Counsel <sup>^</sup>for the petitioner submitted that as per Annexure-A - construction agreement, there was no scope for increasing the price of the flat and submitted that amount agreed in the construction agreement will be binding on the Society and therefore Society had no legal right to demand a further sum of Rs.64,000/- by way of escalation. He submitted that although there was an undertaking

given by the Member stating that in the event of an escalation in the construction, the petitioner would pay the escalated amount without demur. It was submitted by Mr. Tarakram that it has not become part and parcel of the Agreement entered into by the petitioner with the Society.

3. The learned Govt. Advocate submitted that the undertaking was given on 24.11.93 and is therefore binding on the petitioner. It was also submitted that the escalation became necessary on account of the increased cost of construction.

4. The petitioners having given a declaration that they would be prepared to pay the escalation cost, cannot now state that they are not liable to pay the escalation. In that view of the matter, the writ Petitions are dismissed. If the petitioners seek some more time to pay the escalation cost, the Society may consider the same and dispose it of in accordance with law.

Sd/-  
JUDGE

